

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JANE A. FUHR

Claimant

VS.

DILLON COMPANIES, INC.

Respondent

Self-Insured

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Docket No. 233,475

ORDER

Respondent appeals from a preliminary hearing Order dated July 20, 1999 entered by Administrative Law Judge Jon L. Frobish.

ISSUES

This appeal involves a claim for a series of repetitive use injuries that occurred May 5, 1997 and each and every day thereafter while claimant was employed with respondent. Claimant's injuries included bilateral carpal tunnel syndrome and trigger fingers in both hands.

At the July 20, 1999 preliminary hearing claimant was seeking additional medical treatment. Respondent admitted claimant suffered accidental injury arising out of and in the course of her employment with Dillon's but argued claimant thereafter suffered intervening injury during her employment with Albertson's and that claimant's current need for medical treatment was the result of that subsequent injury.

The issue, therefore, is whether claimant's present need for treatment is due to a new accidental injury to her left upper extremity from her employment at Albertson's.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Generally, workers compensation laws require an employer to compensate an employee for personal injury or aggravation of a preexisting injury incurred through accident arising out of and in the course of employment. K.S.A. 1998 Supp. 44-501(a); Kindel v. Ferco Rental, Inc., 258 Kan. 272, Syl. ¶ 2, 899 P.2d 1058 (1995); Baxter v. L.T. Walls Constr. Co., 241 Kan. 588, 738 P.2d 445 (1987). The question of whether there has been an accidental injury arising out of and in the course of employment is a question of fact. Harris v. Bethany Medical Center, 21 Kan. App. 2d 804, 909 P.2d 657 (1995).

In Jackson v. Stevens Well Service, 208 Kan. 637, 493 P.2d 264 (1972), the court held:

[W]hen a primary injury under the Workmen's Compensation Act is shown to have arisen out of and in the course of employment every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury.

Claimant last worked at Dillon's in March of 1998. Claimant is seeking medical treatment for an aggravation that occurred after the series of work-related accidents at Dillon's. The question of whether the aggravation of claimant's condition is compensable under workers compensation as a new injury turns on whether claimant's work-related activity at Albertson's aggravated, accelerated, or intensified the disease or affliction. Boutwell v. Domino's Pizza, 25 Kan. App. 2d 100, 121, 959 P.2d 469, *rev. denied* 265 Kan. ____ (1998). Based upon the medical evidence and claimant's testimony, the Appeals Board finds that it did.

It is significant to this fact finder that although claimant relates her condition to her employment at Dillon's, she describes her left hand as being virtually symptom free after being off work for the surgery on the right. But her symptoms returned when she started working again at Albertson's. She described her left hand symptoms while working at Albertson's as worsening and when she was busy they got "real bad". Dr. George Lucas' February 22, 1999 office notes reflect that since claimant started working at Albertson's her left hand had gotten more numb than it had ever been. It appears, therefore, that claimant's subsequent employment intensified claimant's affliction and accelerated her need for surgery. There are no expert medical opinions to the contrary. Based upon the present record the Appeals Board finds there has been a new accident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Lw Judge Jon L. Frobish on July 20, 1999, should be, and the same is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of November 1999.

BOARD MEMBER

c: W. Walter Craig, Wichita, KS
Scott J. Mann, Hutchinson, KS
Jon L. Frobish, Administrative Law Judge

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Philip S. Harness, Director